DEFENSE

Security of Military Information

Agreement Between the
UNITED STATES OF AMERICA
and SOUTH AFRICA

Signed at Pretoria November 20, 1998

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

SOUTH AFRICA

Defense: Security of Military Information

Agreement signed at Pretoria November 20, 1998;
Entered into force November 20, 1998.

AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

CONCERNING

SECURITY MEASURES FOR THE PROTECTION OF CLASSIFIED MILITARY INFORMATION

PREAMBLE

The Government of the United States of America and the Government of the Republic of South Africa, hereinafter referred to as the "Parties" and separately as a "Party";

In furtherance of mutual co-operation to ensure the protection of classified military information;

Have agreed as follows:

ARTICLE 1

Classified military information provided directly or indirectly by one Party to the other Party, or to an officer or other representative of the other Party, shall be protected according to the terms set forth herein and in accordance with the laws and regulations of the country of the recipient Party.

ARTICLE 2

Each Party shall promptly notify the other of any changes to its laws and regulations that would affect the protection of classified military information under this Agreement. In such case, the Parties shall consult, as provided for in Article 23, to consider possible amendments to this Agreement. In the interim, classified military information shall continue to be protected as described in this Agreement, unless otherwise agreed in writing by the releasing Party.

ARTICLE 3

For the purpose of this Agreement, classified military information is information that is generated by or for the Department of Defense of the United States of America or the Department of Defence of the Republic of South Africa, or that is under their jurisdiction or control, and which requires protection in the interests of national security of the Parties. For the Government of the United States of America, classified military information is marked CONFIDENTIAL, SECRET or TOP SECRET. For the Government of the Republic of South Africa, classified military information is marked RESTRICTED, CONFIDENTIAL, SECRET, or TOP SECRET.

The information may be in oral, visual, magnetic or documentary form, or in the form of equipment or technology.

ARTICLE 4

Supplemental annexes under this Agreement may be concluded by the designated implementing agencies. For the Government of the United States of America, the implementing agency shall be the Department of Defense. For the Government of the Republic of South Africa, the implementing agency shall be the Department of Defence.

No individual shall be entitled to access to classified military information solely by virtue of rank, appointment or security clearance. Access to the information shall be granted only to those individuals whose official duties require such access and who have been granted a personnel security clearance in accordance with the prescribed standards of the recipient Party. The Parties shall ensure that :

A. The recipient Party shall not release the information to a government, person or other entity of a third country without the prior written approval of the releasing Party;

B. The recipient Party shall afford the information a degree of protection equivalent to that afforded by the releasing Party;

C. The recipient Party shall not use the information for any other purpose than that for which it was provided without the prior written approval of the releasing Party;

D. The recipient Party shall respect private rights, such as patents, copyrights or trade secrets which are involved in the information; and

E. Each facility or establishment that handles classified military information shall maintain a registry of the clearance of individuals at the facility or establishment who are authorized to have access to such information.

ARTICLE 6

The determination on the granting of a personnel security clearance to an individual shall be consistent with the interests of national security and shall be based upon all available information indicating whether the individual is of unquestioned loyalty, integrity, trustworthiness, and excellent character, and of such habits and associates as to cast no doubt upon his or her discretion or good judgement in the handling of classified military information.

ARTICLE 7

An appropriate investigation, in sufficient detail to provide assurance that the above criteria have been met, shall be conducted by the Parties with respect to any individual to be granted access to classified military information covered by this Agreement.

ARTICLE 8

Before a representative of a Party releases classified military information to an officer or representative of the other Party, the receiving Party shall provide to the releasing Party an assurance that the officer or representative possesses the necessary level of security clearance and requires access for official purposes and that the information shall be protected by the receiving Party as required by the releasing Party.

ARTICLE 9

Authorizations for visits by representatives of one Party to facilities and establishments of the other Party, where access to classified military information is required, shall be limited to those necessary for official purposes. Authorizations to visit the facilities and establishments shall be granted only by the Parties or government officials designated by the Parties. The Parties or their designees shall be responsible for advising the facility or establishment of the proposed visit, and the scope and highest level of classified military information that may be furnished to the visitor. Requests for visits by representatives of the Parties shall be submitted through the Defense Attaché Office in Pretoria in the case of United States visitors, and the South African Defence Attaché Office in Washington, D.C., in the case of South African visitors.

ARTICLE 10

Each Party shall be responsible for safeguarding of all classified military information of the other Party while it is in transit or storage within its territory.

ARTICLE 11

Each Party shall be responsible for the security of all government and private facilities and establishments where the information of the other Party is kept and shall assure that qualified individuals are appointed for each such facility or establishment who shall have the responsibility and authority for the control and protection of the information.

ARTICLE 12

The information shall be stored in a manner that assures access only by those individuals who have been authorized access pursuant to Articles 5, 6, 7 and 8 of this Agreement.

ARTICLE 13

Classified military information shall be transmitted between the Parties through government-to-government channels. The minimum requirements for the security of the information during transmission shall be as follows:

A. **Documents:**

(1) Documents or other media containing classified military information shall be transmitted in double, sealed envelopes, the innermost envelope bearing only the classification of the documents or other media and the organisational address of the intended recipient, the outer envelope bearing the organizational address of the recipient, the organisational address of the sender, and the registry number, if applicable.

(2) No indication of the classification of the enclosed documents or other media shall be made on the outer envelope. The sealed envelope shall be transmitted according to the prescribed regulations and procedures of the releasing Party.

(3) Receipts shall be prepared for packages containing classified documents or other media that are transmitted between the Parties and the receipt for the enclosed documents or media shall be signed by the final recipient and returned to the sender.

B. **Classified Equipment:**

(1) Classified equipment shall be transported in sealed, covered vehicles, or be securely packaged or protected in order to prevent identification of its details, and kept under continuous control to prevent access by unauthorized individuals.

(2) Classified equipment which must be stored temporarily awaiting shipment shall be placed in a protected storage area. The area shall be protected by intrusion-detection equipment or guards with security clearances who shall maintain continuous surveillance of the storage area. Only authorized personnel with requisite security clearance shall have access to the storage area.

(3) Receipts shall be obtained on every occasion when classified equipment changes hands *en route*.

(4) Receipts shall be signed by the final recipient and returned to the sender.

C. **Electronic Transmissions:** Classified military information transmitted by electronic means shall be encrypted.

ARTICLE 14

Accountability and control procedures shall be established to manage the dissemination of and access to classified military information.

ARTICLE 15

Each Party shall stamp or mark the name of the originating government on all classified military information received from the other Party. The information shall be marked with a national security classification marking of the recipient Party that will afford a degree of protection equivalent to that afforded to it by the releasing Party.

ARTICLE 16

Classified documents and other media containing classified military information shall be destroyed by burning, shredding, pulping, or other means preventing reconstruction of the classified information contained therein.

ARTICLE 17

Classified equipment shall be destroyed beyond recognition or modified so as to preclude reconstruction of the classified military information in whole or in part.

ARTICLE 18

When classified documents or other media are reproduced, all original security markings thereon shall also be reproduced or marked on each copy. Such reproduced documents or media shall be placed under the same controls as the original document or media. The number of copies shall be limited to that required for official purposes.

ARTICLE 19

All translations of classified military information shall be made by individuals with security clearances pursuant to Articles 6, 7, and 8. The number of copies shall be kept to a minimum and the distribution thereof shall be controlled. Such translations shall bear appropriate security classification markings and a suitable notation in the language into which it is translated, indicating that the document or media contains classified military information of the releasing Party.

ARTICLE 20

Prior to the release to a contractor or prospective contractor of any classified military information received from the other Party, the recipient Party shall :

A. Ensure that such contractor or prospective contractor and the contractor's facility have the capability to protect the information;

B. Grant to the facility an appropriate facility security clearance;

C. Grant appropriate personnel security clearances for all individuals whose duties require access to the information;

D. Ensure that all individuals having access to the information are informed of their responsibilities to protect the information in accordance with applicable laws and regulations;

E. Carry out periodic security inspections of cleared facilities to ensure that the information is protected as required herein; and

F. Ensure that access to the information is limited to those persons who have a need to know for official purposes.

ARTICLE 21

The releasing Party shall be informed immediately of all losses or compromises, as well as possible losses or compromises, of its classified military information, and the recipient Party shall initiate an investigation to determine the circumstances. The results of the investigation and information regarding measures taken to prevent recurrence shall be forwarded to the releasing Party by the Party that conducts the investigation.

ARTICLE 22

Implementation of the foregoing security requirements can be advanced through reciprocal visits by security personnel of the Parties. Accordingly, security representatives of each Party, after prior consultation, shall be permitted to visit the other Party, to discuss, and view firsthand, the implementing procedures of the other Party in the interest of achieving reasonable comparability of the security systems. Each Party shall assist the security representatives in determining whether classified military information provided by the other Party is being adequately protected.

ARTICLE 23

A. This Agreement shall enter into force on the date of last signature.

B. Amendments to the present Agreement shall be made by mutual consent of the Parties and shall enter into force as of the date of their signing.

C. This Agreement shall remain in force for a period of five years and shall be automatically extended annually thereafter, unless either Party notifies the other in writing through the diplomatic channels, ninety days in advance, of its intention to terminate the Agreement.

D. Notwithstanding the termination of this Agreement, all classified military information provided pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at .....PRETORIA..... on this .....20TH..... day of .....NOVEMBER 1998.....

Keith A. Beach

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA